

No. 9(1)82-6 Lab. 215.- In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Anjala Silk Mills Pvt. Ltd., 31, Sector 6, Faridabad.

**IQ THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD**

References Nos. 416/80, 417/80, 418/80 and 419/80

between

**SARVSHRI SHER SINGH, SAMUNDER SINGH, BIR SINGH, SANT RAM, WORKMEN AND THE
RESPONDENT MANAGEMENT M/S ANJALA SILK MILLS (P) LIMITED, 31, SECTOR 6, FARIDABAD**

Shri R.N. Roy, for the workmen.

Shri S.N. Khanna, for the respondent management.

AWARD

These references Nos. 416/80, 417/80, 418/80, 419/80 have been referred to this Court by the Hon'ble, Governor of Haryana,—*vide* his order No. ID/FD/74-80/46405, dated 1st September, 1980, ID/FD/74-80/46399, dated 1st September, 1980, ID/FD/74-80/46393, dated 1st September, 1980, ID/FD/74-80/46411, dated 1st September, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Sarvshri Sher Singh, Samunder Singh, Bir Singh, Sant Ram, workmen and the management of M/s Anjala Silk Mills (P) Limited, 31 Sector 6, Faridabad. The terms of the references were :—

“Whether the termination of services of S/Shri Sher Singh, Samunder Singh, Bir Singh and Sant Ram were justified and in order ? If not, to what relief are they entitled ?”

On receiving these references, notices were sent to the parties and they put their appearance in the court and filed their pleadings. On the pleadings of the parties. The case of the workmen according to their demand notice, claim statement and rejoinder is that they were working as per details given below :—

Serial No.	Name of the workman	Date of appointment	Wages	Date of termination
1	Shri Sher Singh	August, 1974	Rs 280	17-4-80
2	Shri Samunder Singh	2-8-1977	Rs 280	17-4-80
3	Shri Bir Singh	June, 1976	Rs 280	17-4-80
4	Shri Sant Ram	2-4-1973	Rs 265	17-4-80

and on the plea of surplus and that too without compliance of mandatory pre-requisites required under section 25F of the Industrial Disputes Act, 1947. They received the order of the respondent dated 14th April, 1980. The retrenchment was to be on 16th April, 1980. The management did not pay dues to the workmen. The retrenchment is neither legal nor valid nor operative. So the workmen are entitled for the reinstatement. They have written in correct the suggestion of the respondent that there was a load shedding of the power cuts, shortage of diesel and shortage of raw materials and the respondent has not paid their full dues. Even after receiving the cheque sent by the respondent, the same is received without prejudice to their claim of reinstatement, so the termination was wrongful, illegal and against the principles natural justice and the workmen are entitled for the reinstatement with full backwages and continuity of service.

According to the written statement the respondent had objected the references in its preliminary objection stating therein that the appropriate Government on the basis of the report submitted by the Conciliation Officer under section 12 (4) of the Industrial Disputes Act, referred these cases wrongly as references for term ination of service. As the management had retrenched the services of the workmen, as per the Third Schedule of the Industrial Disputes Act, the Industrial Tribunal was the proper authority to decide and not the Labour Court. Keeping in view this fact the references made by the Government to the Labour Court is illegal and references are liable to be

quashed. The respondent sent the notices to the workmen dated 14th April, 1980 which were refused and then sent through registered A.D. which were received. The respondent sent payees account cheque to the workmen dated 18th April, 1981 of Punjab and Sind Bank Limited in full and final settlement of their dues up-to-date of retrenchment. In this way the respondent complied the pre-requisite conditions of section 25-F of the Industrial Disputes Act, 1947. After receiving the amount of cheque shows the willingness of acceptance of the retrenchment amount in full and final settlement.

On the pleadings of the parties, the following issues were framed on 10th November, 1980 :—

Whether the termination of services of the workmen are proper, justified and in order ? If not, to what relief are they entitled ?

At the time of management evidence on 4th January, 1981, both the parties requested the court to consolidate these four cases from Ref. No. 416/80 to 419/80 and that the evidence should be recorded in reference No. 164 of 1980. The request was exceeded to and the references were consolidated on that day before the evidence of the parties started. My findings on issue is as under :—

Issue No. 1.—On this issue the representative of the management argued that it is not a termination, but retrenchment as mentioned in the demand notice of the workmen and in the written statements. He drew my attention towards the demand notice where it is written "The management terminated the services of the workmen from 17th April, 1980,—vide order dated 14th April, 1980 on the plea of surplus and that too without compliance of mandatory pre-requisites required under section 25-F of the Industrial Disputes Act, 1947" and the preliminary objection in the written statements is very clear that the workmen were not terminated but retrenched due to lack of power, shortage of diesel and raw materials. As such the case of the management was retrenchment following under the definition of 25-F of the Industrial Disputes Act. At the time when the case was before the Conciliation Officer all the facts were placed before him and it was specifically made clear to the Conciliation Officer that the services of the concerned workmen were retrenched and not terminated. Even after getting the clear position the appropriate government referred the dispute to the Labour Court under section 10(i) (c) of the Industrial Disputes Act, but the references should have made under clause (D) of sub-section (i) of the Industrial Disputes Act for adjudication as the matter comes within the jurisdiction of the Industrial Tribunal. It is clearly specified in third schedule appendix in the Industrial Disputes Act and it is very clear that the retrenchment of the workmen come within the jurisdiction of the Industrial Tribunal. From the facts and material appears before the Labour Court it will be seen that the case of the management is for retrenchment and not for termination of services of the workmen. as such the references made by the government to the Hon'ble Labour Court is basically bad in law. In these cases the retrenchment had been done and the same is challenged by the workman and the question of retrenchment come within the jurisdiction of the Industrial Tribunal to decide. The case of the concerned workmen is that on 17th April, 1980, they were not allowed to enter the premises of the factory to work and that they were not paid their legal dues under section 25-F of the Industrial Disputes Act. He further argued that the statement of Shri Surinder Singh, Managing Director as MW-1 has stated every thing for the retrenchment, and in cross-examination the representative of the workman asked the question regarding the retrenchment and nothing other allegations on the workmen. How the workmen can say it a termination when they were retrenched, after due notices under the provisions of the Industrial Disputes Act and the respondent sent dues to the workmen which are on the file. The respondent has produced Ex. M-1 to M-28, notices to the workmen, the cheques of the workmen dues and postal receipts and notices to the Government to prove their case of retrenchment. So it is a case of retrenchment and not the termination. Whether the retrenchment was illegal or void does not come under the jurisdiction of this Court. It is only the Industrial Tribunal who can decide the question of illegal or void retrenchment. So the references are bad in law.

The representative of the workman argued on this issue that it is not a retrenchment, but a termination for victimisation of the workmen and the arguments of the representative of the respondent is wrong that the references are bad in law as provided under section 10(i) (c) which is as under :—

"provided that where the dispute relates to any matter specified in the Third schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c)"

Moreover, under item 3 of the Second Schedule discharge or dismissal of workman including reinstatement or grant of relief to the workman, wrongfully dismissal falls within the jurisdiction of the Labour Court. Discharge falls within the mischief of retrenchment as defined under section 2(00) of the Industrial Disputes Act, 1947. So the preliminary objection of the respondent is not sustainable. In these instance cases the workmen were retrenched,—vide notices dated 14th April, 1980, retrenching the workman w.e.f. 16th April, 1980. The letters were served on the workman under registered A.D. post. The workmen were on duty on 16th April, 1980 in the factory. Nobody inform them that they were retrenched and the payment under section 25-F of the Industrial Disputes Act, 1947 were not ready for payment in the factory on that day. The workmen received the notices and then the cheques, never amounts to compliance mandatory pre-requisites required under section 25-F of the Industrial Disputes Act. The workmen,—vide letter dated 27th April, 1980 to the management in acknowledgement of the cheques had clearly stated that he had received the amount without prejudice the claim of their reinstatement which is Ex. W-1,

so the objection of the management is not sustainable under the eye of law. He further, argued that the respondent had not displayed the notices of retrenchment on the notice board on 14th April, 1980 and not sent to the Government to inform about the retrenchment. The respondent had not prepared the seniority list of the workman retrenched and not produced even in the court. So the termination by way of retrenchment was illegal and without any justification. So the workmen are entitled for reinstatement with continuity of services and with full back wages.

After hearing the arguments of both the parties and carefully going through the file, I am of the view that the references are about the retrenchment and not of the termination of services illegally. The workman in their demand notice have also mentioned that the plea taken by the respondent for termination was surplus without completing the mandatory pre-requisite require under section 25-F of Industrial Disputes Act, 1947 and the written statement in which the respondent had taken it is a case of retrenchment, and produced the evidence on the basis of retrenchment as discussed by the respondent's representative in his arguments. I feel that the arguments put forward by the representative of the respondent has some force. After going through the whole file it is not a case of termination but of retrenchment and the references to this court is for termination of services and not retrenchment, which is a subject of III Schedule of the Industrial Disputes Act in which the jurisdiction of the Court argued. So it is not good for me to decide these references on the evidence of retrenchment before me. So the references are bad in law.

No order as to costs. This be read an answer to this reference.

Dated the 1st January, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 15, dated the 4th January, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947, with the request that acknowledgement of the above said award may please be sent within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1) 82-6Lab-15234.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Bharat Rubber Udyog Sihi Gate (near Bhoodat Colony), Ballabgarh.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 5 of 1981

between

SHRI MANTOLI, WORKMAN AND THE MANAGEMENT OF M/S. BHARAT
RUBBER UDHOG, SIHI GATE NEAR BHOODAT COLONY BALLABGARH.

Shri Sunejari Lal, for the workman.
Shri Pardeep Sharma, for the respondent management.

AWARD

This reference No. 5 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. 1D/FD/234-80/65000, dated 24th December, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Mantoli, workman and the respondent management of M/s. Bharat Rubber Udyog, Sihi Gate (Near Bhoodat Colony), Ballabgarh. The term of the reference was :—

Whether the termination of services of Shri Mantoli was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties, on receiving this reference. They put their appearance and filed the pleadings in the case. The case of the workman according to his demand notice and claim statement is that he joined the factory on 4th June, 1980 as a mixture man at Rs. 325 per month and working satisfactory. On 4th August, 1980 the owner of the factory came to know that the claimant was in the service of M/s. Friend Rubber

works, Ballabgarh and he had some cases with that firm. The respondent removed the workman from service. The workman made the complaint to the Labour Inspector and after his intervention the respondent took the workman on 21st August, 1980, but from this date they had the fear of the workman and on 11th September, 1980 they got signed a voucher and sent the workman out from the factory and in this way terminated the services of the workman illegally and without any reason and the workman is entitled for his reinstatement with full back wages.

The case of the respondent according to its written statement is that the workman is not entitled to any reinstatement as the respondent is registered under the Punjab Shops and Commercial Establishment Act. The workman was employed purely on temporary and only on trial basis and no appointment letter was given to the workman only for this reason. The claimant was a habitual absentee apart from this fact that he was very much arrogant and quarrelsome nature and never performed his duties with congruous care and diligence. He spoiled almost every task which was developed upon him despite warning he never made any bid to improve his shortcomings. The management suffered large monetary losses due to his deliberate negligence and misfeasance. The claimant himself left the job in August, 1980, by way of remaining absent without any intimation. Yet he filed a spurious complaint before the Labour Inspector in order to extract some easy money from the management. On the asking of the Labour Inspector the respondent again took the claimant on duty telling the whole story to the Labour Inspector. On 10th September, 1980 the claimant deliberately did not oil the mixing machine inspite of a plethora of instructions from his foreman Shri Ram Saran, and the machine broke down due to paucity of oil as it was totally dry. When the foreman Shri Ram Saran asked the claimant why he did not oil the machine, inspite of feeling ashamed he abruptly grabbed with the foreman and behaved in a most indecent manner. He also refused to render any apology. Regarding this said episode, the management made the charge-sheet - cum-suspension letter against him on 12th September 1980 and instructed him to receive the same, which he refused to accept and behave with the management in a rude manner using vulgar language. In these circumstances, the management had no other alternative except to terminate his services. Under these circumstances, the workman is not entitled to any relief what so ever. Neither his work nor his behaviour at mark. The workman was temporary and since his work and conduct was not satisfactory, his services were terminated.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the termination of service of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
- (2) Relief ?

My findings on issues are as under :—

Issue No. I

On this issue the representative of the management argued that the workman was taken on trial basis and no appointment letter was given to him. The person taken on trial has no claim over the respondent. The respondent has come in the court with a very clean hands and admitted that the workman was taken on trial on 4th June, 1980 and terminated when the respondent totally failed to accommodate such persons. The workman did not know job, he was given. The proper work was given in the month of August, 1980. After giving small jobs and on 2nd August, 1980 the workman spoiled 200 Kg. rubber spung and make loss to factory of Rs. 2,000 on which Ex. M-1 was given to the workmen from the foreman Shri Ram Saran dated 3rd August, 1980 which the claimant refused to receive. Again on 10th September, 1980 the claimant damaged one main machine of the respondent by deliberate negligence inspite of instructions given to him from the respondent. The workman claimant failed to oil the machine and the machine is damaged due to dry which is Ex. M-2, which was also refused by the workman. On this report the management, decided to give the charge sheet dated 12th September, 1980 which is Ex. M-3. The claimant also refused to take the same. In this way the workman make a loss to the respondent into throuasands. After damaging the main machine the claimant grabbed with the foreman and used vulgar language in the presence of the other workmen of the factory. So there was no other alternative with the management except to removed the service of the workman. So he was asked to take his dutes under the above circumstances. The workman was on trial basis and can not be said to be the workman in legal sense of the factory. The claimant has admitted the fact that he received no appointment letter from the respondent. So the workman is not entitled for any relief.

The representative of the workman argued that the workman was terminated on 4th August, 1980 by the respondent and on the pressure of the union and labour authorities, he again employed by the respondent on 21st July, 1980 which is admitted fact by the respondent his written statement that they employed the claimant again on 21st July, 1980 by the intervention of the Labour Inspector. Again the respondent terminated the services of the workman on 11th September, 1980 on the same grounds of union activities. He alleged that the owner of the factory did not give any appointment letter to any workman in the factory because it is very small unit and appoint the person without any document with the workman. The workman was terminated 11th September, 1980 and he raised the demand notice on 22nd September, 1980 because the workman was terminated illegally. After this demand notice the conciliation officer called the parties and examined both which is Ex. W-1. After the failure report the conciliation officer sent for the reference and the reference is genuine and the workman is entitled for reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties, and going through the file, I am of the view that the workman was appointed on trial basis because the workman has given no proof of his appointment on the file. The respondent had put explanations and charge-sheet on the file for which the claimant has no reply for them. In the absence of any reply from the side of the workman, it is clear that the explanation called by the respondent of the workman are true. The respondent management employed the workman to work and not spoiling the work and machinery of the respondent factory. If a workman made machinery losses to the factory due to his negligence or not knowing the job well then how fare the management could meet with such losses and the knowingly well and mis-behaved his superior of the factory during his duties is again a very serious charge on the workman and the workman refused to receive the charge-sheet from the respondent. It is again serious thing on the part of the workman. The workman joined his service on 4th June, 1980 and within three months he has shown by this and he failed to satisfy the employer with his work. So the order of termination passed by the respondent is justified and in order. The workman is not entitled to any relief.

This be read in answer to this reference.

The 18th December, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 3516, dated the 23rd December, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-6Lab./15235.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s B.C.C. Industries, Plot No. 137, Sector 24, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 22 of 1981

between

**SHRI A.S. MANDAL, WORKMAN AND THE MANAGEMENT OF M/S. B.C.C. INDUSTRIES,
PLOT NO. 137, SECTOR 24, FARIDABAD**

Present:—

Shri R.L. Sharma, for the workman.
Shri J.S. Saroha, for the management.

AWARD

This reference No. 22 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana, —*vide* his order No. ID/FD/178-80/199, dated 2nd January, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri A.S. Mandal, workman and the management of M/s. B.C.C. Industries, Plot No. 137, Sector 24, Faridabad. The term of the reference was:—

Whether the termination of services of Shri A.S. Mandal. was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties, after receiving this reference and they came in the court and filed their pleadings. According to demand notices and rejoinder the case of the workman is that he joined on 2nd September, 1979 as machinist at the rate of Rs. 320 p.m. and terminated on 24th October, 1980. There was a lay off of the workman from 3rd October, 1980 to 12th October, 1980 and when after this lay off the workman came in the factory on duty on 14th October, 1980. the respondent refused to do his duty without any reason. So the workman prayed for his reinstatement with continuity of service and with full back wages.

The case of the respondent according to its written statement is that the workman was appointed on probation and continued upto 8th October, 1980. The workman was habitual absentee and he remained absent without any intimation and leave application and was doing his private job in private institution. The claimant absented himself from the factory from 2nd October, 1980 and did not turn up of his duty till the date of his full and final

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accounts on 16th October, 1980. The claimant raised demand notice on 14th October, 1980 before the conciliation officer and the claimant approached the management to settle his accounts. On 16th October, 1980, he came in the factory and requested for full and final accounts and on his requests he was paid and got signed on the voucher on 16th October, 1980. After this full and final payment the claim of the claimant for reinstatement with back wages is quite vague, invalid, unfounded, baseless and wrong. So this reference may be rejected.

On the pleadings of the parties, the following issues as per reference was drawn :—

1. Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

My findings on this issue is as under :—

Issue No. 1—

The representative of the respondent argued on this issue that the workman was habitual absentee from the factory without any application and information to the respondent. There was a lay off of the workman from 3rd October, 1980 to 12th October, 1980 after that the workman came in the factory on 14th October, 1980 on which the respondent asked the explanation of being absent and asked the workman to assure the management to work on regular way as it is a very small unit and if one person is absent from his duty for some days then it is very difficult for them to manage the whole work. So either give the assurance that he will come to work without break or in this way the respondent could not prolong with the workman. The workman refused to give the assurance and went out of the factory and raised the demand before the Conciliation Officer on the same day, but the workman came in the factory on 16th October, 1980 and asked the respondent to give his accounts. He signed the voucher Exhibit M-1 dated 16th October, 1980 which he has admitted before the court that he signed the same. Though he has admitted before the court that he signed the same. Though he has denied the receiving of the payment of the voucher. But the workman is well educated man when he signed the voucher fully knowing well that he is signing the voucher, it means he has received the amount mentioned in the voucher and when he has collected his amount then he has taken his full and final after he demand notice raised. Further more the respondent has produced MW-1 to prove this voucher. He has stated that I wrote the voucher and the claimant signed the same in his presence and took the money as full and final. He further argued that the workman representative has cross examined this witness and put the suggestion that this papers were got signed by the respondent previously which was denied by the respondent witness. When the witness on Exhibit M-1 is admitted by the workman and there is no such suggestion against them to rebutt his documents, it is clear that the workman took his full and final after the demand notice. So he is not entitled to any relief what so ever. He further argued that the workman is gainfully employed after going out the factory and Exhibit M-3 is a proof of his employment. The certificate given by the Favourite Small Investment Limited, Faridabad Branch, Nehru Park, NIT, Faridabad. So when the workman is employed at better place then he is not in the need of employment and his claim of reinstatement is false and without any base.

The representative of the workman argued on this issue that the voucher Exhibit M-1 might have got signed by the workman during his service period because the signatures is admitted by the workman but the workman has denied the payment received by him as full and final. The story prepared by the respondent is a false one. The workman came in the factory regularly and the workman was terminated due to his union activities, without giving any notice, chargesheet or enquiry which is illegal in the eye of law and the workman is entitled for his reinstatement with other benefits.

After hearing the arguments of the parties, and going through the file, I am of the view that the workman has failed to prove his case of termination without any reason. In the arguments the respondent have alleged that the claimant was a habitual absentee from the duty and they want the assurance from the claimant for regular duties. The workman gave no reply in his rejoinder or in his own statement as WW-1. Further more he admits the signatures on Exhibit M-1 which is a voucher for full and final payment on behalf of the respondent and in this voucher it is written that it is on the basis of mutual agreement. The workman is a English knowing person and seems to be highly educated as he has signed the voucher in English. When he has signed the voucher he has not said in his statement in what circumstances he has signed this voucher. He should have explained his position in his statement as WW-1 which he failed to give any reason for his signing this voucher. So it clear that he signed the voucher, Exhibit M-1 knowingly and taken the money after signing the voucher as full and final payment. When the workman taken his full and final with mutual agreement so there is no Industrial Disputes remains with the parties and the claimant has no right to claim his re-instatement. So the workman is not entitled to any relief.

HARI SINGH KAUSHIK,
Presiding Officer,

Dated 18th December, 1981

Labour Court, Haryana, Faridabad.

Endorsement No. 3517, dated 23rd December, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.